

**MEMORANDUM**  
Emeryville Police Department

Date: April 30, 2015  
To: Officer Michelle Shepherd  
From: Ken James, Chief of Police  
Subject: Administrative Investigation – Officer Involved Shooting  
February 3, 2015

The Administrative Investigation into the events of February 15, 2015 which lead to the use of deadly force by yourself and Officer Warren Williams, has concluded that your use of force was justified and within all Police Department and City Rules, Regulations, Policies and Procedures as well as State and Federal Law.

  
Ken James  
Chief of Police

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FRASER INVESTIGATIONS & CONSULTING

# **EMERYVILLE POLICE DEPARTMENT ADMINISTRATIVE INVESTIGATION**

## **EPD IA 15-001**

**EMERYVILLE POLICE DEPARTMENT  
ADMINISTRATIVE INVESTIGATION  
EPD 15-001**

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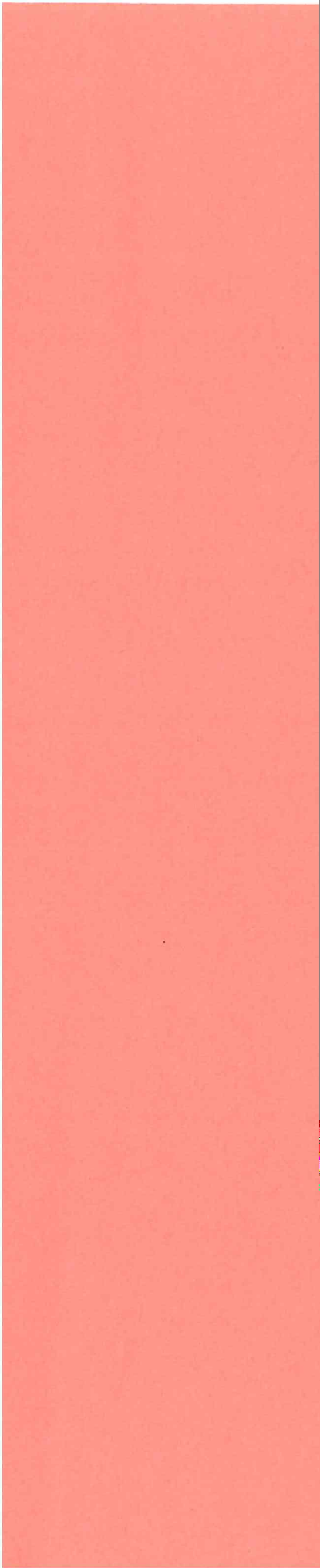
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**EMERYVILLE POLICE DEPARTMENT  
ADMINISTRATIVE INVESTIGATION  
(EPD IA 15-001)**

**TO:** Ken James  
Chief of Police

**FROM:** Michael Fraser  
Fraser Investigations & Consulting

**SUBJECT:** Administrative Investigation of Officer Involved Shooting – EPD IA 15-001

**INVOLVED OFFICERS**

Officer Warren Williams (Badge# 346)  
Officer Michelle Shepherd (Badge# 351)

**FINDINGS**

A thorough review of Department Policies and Rules has been conducted. Those which are applicable to this incident have been identified and can be found at the end of this report.

There were no violations of Department Policies or Rules on the part of either involved officer.

**INTRODUCTION**

On February 3, 2015 two on-duty Emeryville police officers were involved in an officer involved shooting in the City of Oakland, CA, which resulted in the death of a 39 year-old woman. The Emeryville Police Department is required, by Department Policy 310 – Officer Involved Shooting, to conduct timely civil and/or administrative investigations. I have been hired by the City of Emeryville to conduct the Administrative Investigation into this matter.

On February 27, 2015 I met with Emeryville Police Commander Jeannie Quan at the Emeryville Police Department where I was briefed of the events that led up to the shooting and provided related written, audio and video documentation.

Information from the following jurisdictions have be incorporated into this Administrative Report as appropriate:

The Emeryville Police Department documented the original call for service, which had occurred at Home Depot as a Robbery, in report number 1502-0259 (exhibit 1).

Since the shooting occurred within the jurisdiction of the Oakland Police Department, it will be conducting its own criminal investigation. At the time of this writing only the initial report #15-006467 and several supplements have been provided to Emeryville Police Department (exhibit 2).

As the Emeryville Police Department is a member of the Alameda County Chiefs of Police and Sheriff's Association and keeping with the policy of the association, the Alameda County District Attorney's Office will also conducting an independent criminal investigation. As of this writing the District Attorney has not provided any documentation pertaining to their investigation.

## SYNOPSIS

<b>Date of Occurrence</b>	February 3, 2015
<b>Location of Occurrence</b>	Extra Space Storage 3406 Hollis Street Oakland, CA
<b>Related Incident Location</b>	Robbery - EPD Event/Case Number 1502-0259 Home Depot 3838 Hollis Street Emeryville, CA
<b>Involved Officers</b>	Officer Warren Williams (Badge# 346) Officer Michelle Shepherd (Badge# 351)
<b>Deceased Suspect</b>	Yvette Henderson Age: 39 DOB: [REDACTED] Height: 5' 1" Weight: 192 lbs. Address: [REDACTED] [REDACTED]

The weather forecast for February 3, 2015 called for partly sunny skies with a high of 63 degrees in Oakland. On that date at approximately 12:35 p.m. the Emeryville Police Department received a call from a loss prevention agent, [REDACTED] with Home Depot located at 3838 Hollis St., Emeryville, CA. [REDACTED] informed dispatch that he and others were attempting to detain an African-American woman, later identified as Yvette Henderson, for shoplifting, but she was being "uncooperative". Emeryville dispatch created notes and documented them in an "Event Record" which essentially created a log of the incident and provides a timeline as it unfolded (exhibit 3). The initial phone call as well as radio traffic between the responding officers and Emeryville dispatch were recorded and later transcribed (exhibits A and 4 respectively).

Officer Shepherd was dispatched to the call. Officer Williams was at the Emeryville Police Department when the detail was dispatched. Williams responded to cover Shepherd from the Emeryville police department. Both officers were dressed in department approved uniforms, driving black and white marked police vehicles with exterior emergency lights mounted on the roof tops of their respective vehicles.



While the officers were en route to the call, [REDACTED] advised dispatch that Henderson had brandished a gun and was running towards Hollis St. Once on Hollis Street Henderson turned left (southbound) toward Interstate 580. [REDACTED] followed Henderson to Hollis and watched as she proceeded south on the east sidewalk. Henderson's flight was recorded by Home Depot security cameras (exhibit B-1 timestamp 12:36 p.m. and exhibit B-2 – timestamp 12:37 p.m.).

Upon receiving information that the woman was armed, Officer Williams advised he was responding Code 3. [REDACTED] then advised dispatch that the weapon was a revolver, which was relayed to the officers.

Officer Shepherd was first to arrive on scene. She had activated the overhead emergency lights of the black and white marked Emeryville Police SUV she was driving. Shepherd saw an African-American woman with a ponytail, dressed in a gray shirt and blue jeans running on the east sidewalk of Hollis and confirmed with [REDACTED] that she was the woman who had brandished the handgun.

Henderson approached a bus that had stopped under the I-580 overpass. She can be seen on the video from the bus' forward facing security camera 5 waving as to hail the bus as she continued southbound on Hollis Street (exhibit 3, timestamp 12:41:14). The bus pulled away and Henderson, ran to the rear of the bus and approached a lime green vehicle that had stopped behind the bus. She approached the car on the driver's side, as she did she brandished a handgun at the driver through the driver's side window (exhibit 3; timestamp 12:41:27 and exhibit 5). She held the weapon in her right hand. As Shepherd drove closer, Henderson turned, saw Shepherd's vehicle approaching and ran to the rear of the car (southbound); back towards the east sidewalk of Hollis.

When Shepherd saw Henderson with the handgun, she un-holstered her sidearm using her right hand and tried to unbuckle her seatbelt. She then reached for her radio to update dispatch and responding officers. As she did this, she let go of her weapon to manipulate the microphone. Officer Shepherd applied the brakes of the vehicle and her pistol slid onto the passenger side floorboard. When she had a moment, she stopped the SUV and went to the passenger side to retrieve her weapon. When returning to the driver's side of her vehicle Officer Williams drove up and Shepherd provided him with additional information regarding the suspect. The two officers proceeded to pursue the woman in their respective vehicles.

Henderson ran just south of the entrance of Extra Space Storage, 3406 Hollis Street, Oakland, CA, which is located approximately .2 miles south of Home Depot. Henderson stopped and tried to engage the driver of a pickup truck that was parked across the southern most driveway of the property. The driver, [REDACTED] saw that the woman had a gun pointed in his direction. Fearing for his safety, he rolled up his windows and attempted to move his vehicle. Before he could move the truck any distance he noticed the flashing emergency lights of the patrol vehicles. The woman ran into the storage facility to the front of [REDACTED] friend's [REDACTED] silver Ford Focus. [REDACTED] had pulled into the carport area of the storage facility moments earlier and was still in the car.



As Henderson ran onto the property, Williams and Shepherd had exited their vehicles. Officer Williams armed himself with his assigned patrol rifle and Officer Shepherd with her department issued pistol. Both officers shouted commands at Henderson in an attempt to have her surrender.

██████████ saw that the officers had their weapons out and fearing he might be caught in the line of fire he exited his truck and ran to the back where he took cover. He said he remembers the officers yelling commands, but couldn't recall what was said. He also called out to ██████████ to warn him of the impending danger.

Henderson failed to comply with the officers' orders. Williams estimated his distance from Henderson to be about 30 yards. While she was running near the front of the Focus, on the driver's side, she turned and pointed the revolver in the direction of Officer Williams. Williams was scared for his safety and the safety of others in the area. He fired his rifle in the direction of Henderson, aiming for her center mass.

At that time Officer Shepherd was near the rear passenger side of the Focus. She heard the shots and believed that Henderson had just shot at Williams. Shepherd radioed "Shots Fired! Shots Fired!" Fearing for Officer Williams' safety, she discharged one round from her weapon toward Henderson. Based on evidence photos it appears that Officer Shepherd's round entered the front passenger side window and exited through the windshield of the Focus (exhibit 6: img\_2200 photo from exhibit C - EPD photo disk). As she discharged her weapon she saw movement in the Focus; unknown to her at the time she fired, ██████████ was still in the car. Upon seeing ██████████ movement, Shepherd moved to a different position so that she would be in a position that would not further jeopardize ██████████ safety and provide her adequate cover.

Officer Williams said Henderson appeared to be moving in his direction following the first discharge of his weapon. He saw that the driver's side door of the Focus was open and momentarily saw ██████████ just outside of the car. ██████████ feared for his safety as he was in the line of fire of both Henderson and Williams. ██████████ dove back into the car laying across the front seats. Henderson moved to the driver's side of the Focus by the front tire. Williams estimated his distance from the woman to be about 12 yards at this point. With ██████████ back in the car, Officer Williams dropped to one knee to make himself a smaller target and fired a couple more times. It appeared to him that at least one of his rounds may have struck Henderson. As Henderson fell to the ground she dropped the revolver. The gun laid only a couple feet to her right. Williams then saw Henderson rise up and lean in the direction of the revolver. Officer Williams feared that she was going to reach for the gun and so he fired his rifle again. Henderson fell back to the ground and stopped moving.

Officer Shepherd radioed for medical assistance and Officer Williams checked Henderson for a pulse. He too radioed for medical personnel advising that the woman was down and sustained gunshot wounds to the head and arm. Paramedics arrived on the scene and Henderson was declared deceased at 12:50 p.m.

The initial criminal investigation revealed the Henderson's revolver was loaded, but she never fired the revolver (exhibit 7 – img\_2207 photo from EPD photo disk exhibit E). Officer Williams fired six rounds from the rifle and Officer Shepherd fired one round from her pistol.



██████████ vehicle was struck several times by rounds from the two officers' weapons.

Officer Williams was wearing a MUVI personal audio-video recording device (body worn camera) at the time of the shooting. However, he did not activate it until the shooting had ceased and he had checked on Henderson. Once activated, Williams left the camera on until shortly after he arrived at the Emeryville Police Department. The video was copied and logged into evidence at the Emeryville Police Department (exhibit B-4). There is no department policy related to the use and deployment of the camera. The body worn camera was issued to Williams so that it could be field tested while department administration considered the purchase and deployment of such devices.

Officers Williams and Shepherd were asked for public safety statements and then transported separately back to the Emeryville Police Department by Emeryville Detectives Goodfellow and Mayorga respectfully.

Prior to returning to the station Williams made the rifle safe, in the presence of Detective Goodfellow, and secured it in the trunk of his vehicle. Goodfellow then drove Williams back to the Emeryville Police Department in William's assigned patrol car. At the station Williams was photographed in his uniform by Emeryville Police Officer Hintergardt to document his dress at the time of the shooting and any injuries that he may have sustained (exhibit C - EPD photo disk: img\_2117 through img\_2132). Williams had a cut on his lip and abrasions on his left shin (exhibit C - EPD photo disk: img\_2119 and img\_2128 - img\_2129). He was then led to a room to await the arrival of his legal defense attorney. Later that afternoon, Oakland Police took possession of the rifle and Officer William's pistol as evidence.

Officer Shepherd was driven to the police department by Detective Mayorga in his assigned police vehicle. Upon returning to the station, Shepherd was photographed in her uniform by Emeryville Police Officer Hintergardt to document her attire at the time of the shooting and any injuries that she may have sustained (exhibit C - EPD photo disk: img\_2133 through img\_2154). Officer Shepherd did not receive any physical injury due to the incident. She too was led to a room, separate from Officer Williams, to await her legal defense attorney. Officer Shepherd's pistol was later recovered as evidence by Oakland Police.

Per department policy 310.7(a) Officers involved in a shooting may be compelled to provide a blood sample for alcohol and drug screening. Commander Quan recorded the reading of a prepared admonition to both officers on February 3, 2015 at the Emeryville Police Department. The officers' representative, Steven Betz, Esq., was present. Each officer was asked to consent to the blood draw and each refused. Following the refusals, Commander Quan ordered them to comply, which they did (exhibit 8 - prepared admonition form and exhibit D - audio recording). A certified phlebotomy technician from VBS Services completed the blood draw from both officers and prepared the draw documentation (exhibits 9 and 10) which were then logged into the lab refrigerator by Commander Quan as shown on an Emeryville Property Receipt (exhibit 11). The department received the lab toxicology reports, dated March 2, 2015, both indicated that no drugs or alcohol were detected in either officer's system (exhibits 12 and 13).

## WITNESS STATEMENTS

Many possible witnesses were contacted by the staffs of the Emeryville and Oakland Police Departments. Only statements from those with information specific to this investigation and known at the time of this investigation have been included in this report.



██████████ is a Loss Prevention Agent (LPA) for the Home Depot store located at 3838 Hollis Street in Emeryville. ██████████ and other LPAs attempted to detain Ms. Henderson for shoplifting. He, ██████████ stopped Henderson as she left the store. ██████████ wrote that he stepped in front of the woman and she attempted to run. As she ran past ██████████ he attempted to grab her, both lost their footing and fell to the ground. The woman claimed that she had hurt her head and requested that Figueroa call for an ambulance.

██████████ called Emeryville Police and informed them of the situation. A male associate of Henderson's assisted her up from the ground (who was later identified as ██████████ from Kansas City, but had not been contacted at the time of this writing). She handed him keys and told him to leave. She then was seen whispering something to the man just before he walked away. ██████████ each grabbed an arm of the woman. At that point she reached into her purse and pulled out an object wrapped in a towel. She unwrapped the towel and produced a revolver. She said, "Get the fuck away from me, I'll shoot you." Henderson then ran from the area, turning around at one point and said, "Get the fuck away. I'll shoot."

██████████ saw the woman running south on Hollis. At that time an officer arrived on scene and pointed the direction the woman had fled. Moments later he heard six or seven gun shots.

██████████ also gave a written statement to the Oakland Police Department (exhibit 2, Pp55-57). In that statement he described the woman as being in her 40s, wearing a gray/green T-shirt and jeans. ██████████ saw Henderson and her companion select two multi tools and a knife. He indicated that he confronted Henderson. She produced the black revolver and said, "get off me or I'll fucking shoot you." ██████████ was afraid and stepped back. Emeryville police arrived on scene and proceeded in the direction of Henderson. ██████████ could no longer see the officers or the woman. He estimated approximately 20 seconds had passed and he heard gunshots.



[REDACTED]

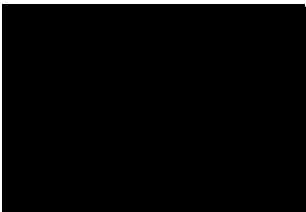
[REDACTED] is a Loss Prevention Agent for Home Depot and witnessed Henderson select several items of merchandise. She was in the company of an unknown male subject when she was placing the merchandise into a bag. Henderson and her associate left the store without paying for the items. [REDACTED] and LPA [REDACTED] stopped Henderson outside the store and asked that she accompany them back inside. She refused and LPA [REDACTED] took hold of her arm. She pulled away which lead to her falling to the ground. [REDACTED] immediately called the Emeryville Police, as [REDACTED] attempted to explain to Henderson that all they needed to do was identify her and she would be released.

The male subject allegedly told Henderson that everything would be alright and she would be right out. [REDACTED] saw Henderson tell the male to leave as she handed him a set of keys. She then whispered something to him and he left. At that time [REDACTED] each took an arm of Henderson to escort her back into the store. She was able to reach into her shoulder bag and pulled out a small black revolver. She told the men, "Let me go I'll fucken shot you" [sic]. Both LPAs released Henderson and hid behind a truck that was in the area until they felt it was safe to emerge and direct the responding officer to where the woman was headed. As Henderson fled the area on foot, she looked back and pointed the gun at them again.

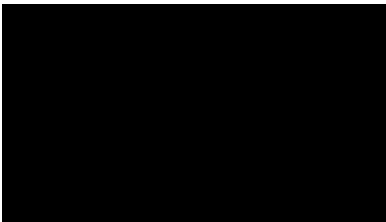
[REDACTED] also provided a written statement to Oakland Police (exhibit 2, Pp 67-68). Ostensibly the written report provided to Oakland was the same as the statement provided to Emeryville. [REDACTED] each took hold of one of Henderson's arms and she took a few steps toward the store. Then she reached into her purse with her right hand and pulled out a black revolver and pointed it at [REDACTED]. She told them to back off or she would shoot. [REDACTED] said he was cared for his life. [REDACTED] watched the woman walk south on Hollis Street and shortly after he saw Emeryville Police arrive. About one minute later he herd five to six gunshots.

[REDACTED]

[REDACTED] is in training as a LPA for Home Depot. He provided Oakland Police with a written statement (exhibit 2, Pp 58-59). In his statement he indicated the he, [REDACTED] approached the woman as she and her male companion exited the store. Since the woman was the only one seen placing merchandise in the bag she was carrying, the LPAs decided to allow the man to leave without identifying him. [REDACTED] indicated that the woman then pointed a gun at all three of them. [REDACTED] feared for their lives, so he pulled the other two LPAs away and told them to let her go. About two to three minutes later he heard about six gunshots coming from the direction he last saw the woman fleeing.



works at Home Depot as a Hardware Associate. On February 3, 2015 was at work. He provided a written statement to Oakland Police (exhibit 2, Pp 60-61). In his statement said he was on break, sitting on a concrete barrier near the "pro exit door", where he saw two LPAs. He then saw a black female exit through the door. The LPAs stopped her and after about one or two minutes he saw the woman started to run. The LPAs stopped her and moved her back toward the door. He said a black male approach the woman and stop momentarily. It appeared that the woman had whispered something to the male. As the LPAs attempted to have the woman return to the store, saw the newest agent duck and run. said at that time he could see that the woman had a black handgun in her right hand and she was pointing it at the new LPA. heard the woman yell something like, "I'll shoot you mother fuckers!" said he was scared and froze. The woman left the shopping cart she was pushing and quickly walked towards Hollis Street. A short time later he heard what sounded to be four or five gun shots.



works at Home Depot and was outside the entrance near Hollis Street driving a forklift at the time of the incident. provided a written statement to Oakland Police (exhibit 2, Pp 63-64). He saw a black female, who he described as standing 5'2", 170 lbs., wearing a gray top and jeans. The woman was with a black male. saw LPA stop the woman as she exited the store. re-entered the store and about a minute later returned to where and the woman were last standing. was seated on the forklift about three feet from the woman, when he saw her, using her right hand pull a black revolver out and point it at chest. He recalled the woman say, "Don't fucking touch me. I'm a shoot yo ass" [sic]. took a few steps back and the woman ran toward Hollis Street. She stopped by the large Home Depot sign turned back and shouted to "Don't follow me or I'll shoot you." lost sight of the woman as she ran down Hollis Street.



[REDACTED]

[REDACTED] also works for Home Depot and provided a written statement to Oakland Police (exhibit 2, Pp 65-66). [REDACTED] was outside the store when he saw a heavy set black woman approximately 5'2" and a black male exit the store. Two loss prevention agents approached the woman and asked to look into her bag. The LPAs then asked the woman to return to the store, but she refused. A scuffle ensued and [REDACTED] went back inside the store. When he returned a short time later he heard the woman say, "Don't touch me or I'll shoot you." [REDACTED] said the loss prevention agents ran back to the store while the woman ran toward Hollis. A short time later another LPA approached the woman and she stopped turned around and said, "Don't follow me or I'll shoot you." [REDACTED] never saw a weapon.

[REDACTED]

[REDACTED] is an employee of Home Depot and was working the afternoon of February 3<sup>rd</sup>. He provided Oakland Police with a written statement (exhibit 2, Pp 69-70). [REDACTED] was sitting outside the store when he saw three loss prevention agents talking to a black female. As the LPAs attempted to escort the woman back into the store he saw her reach into her purse with her right hand and pullout a dark colored handgun. She pointed the gun up into the air causing the LPAs to back off and she ran toward Hollis Street. He saw a police car drive by and then heard multiple gun shots.

[REDACTED]

[REDACTED] was interviewed by Oakland Police Officer D. Ly. [REDACTED] provided a written statement, however it is not available at this time. A synopsis of what was said can be found in the initial Oakland Police report (exhibit 2, Pp95-96). [REDACTED] told Officer Ly that he was driving behind a bus northbound on Hollis Street. He noticed the bus stop at the east curb and then saw a woman (Henderson) running southbound. He initially thought that she was trying to catch the bus, but she continued past. [REDACTED] heard the woman yelling "Hey! Hey!" to which he replied, "No, No". He had thought that the woman was asking for money.

She then ran around the front of his car and approached his driver side door. He saw her point a black short barreled revolver at him. He told the officer that he thought he was going to die. He then thought that she was trying to rob him and he was in fear for his life. A female Emeryville police officer arrived and was about eight feet away when the woman with the gun ran south on Hollis. About 30 seconds later he heard two gun shots.

██████████ vehicle is a lime green color. Video footage from the bus that ██████████ mentions shows Henderson approaching his vehicle and pointing a gun at him through the driver's side window (exhibit B-3 – Camera 7 Timestamp: 12:25p.m.). A screen capture image depicting Henderson pointing the revolver is attached (exhibit 5).

██████████  
██████████ was initially interviewed by Oakland Police Officer D Le-Nguyen and provided a written statement (exhibit 2, Pp 89-90). ██████████ had pulled into the Extra space Storage lot. He was in his vehicle when he heard a female screaming. ██████████ opened his door and she began screaming louder. ██████████ could not understand stand what she was saying. He also heard a male voice screaming commands. He assumed he was a police officer because the male was giving commands; although he couldn't remember what was actually said. ██████████ said he heard three shots followed by another four. He ducked into the passenger seat as soon as he heard the first shots. After the gunfire ceased, a male and female officer came to his vehicle and asked if he was okay. They then escorted him out of his vehicle; at which time he saw the woman lying next to his car.

██████████  
On February 3, 2015, ██████████ was driving his 2004 GMC Sierra pickup truck and following his friend ██████████ to Extra Space Storage and witnessed the events of the shooting. ██████████ was interviewed by Oakland Police at the scene and he provided a written statement (exhibit 2, Pp 93-94), later that afternoon he was interviewed by Oakland Police detectives on at the Oakland Police Department. His interview was video recorded (exhibit B-5.1).

██████████ told detectives that ██████████ had pulled into the storage facility ahead of him and parked under the carport just off the street. He believes ██████████ had pulled in next to the second pillar from the left. ██████████ had pulled his truck into the southernmost driveway and stopped across the sidewalk. Moments later a woman walked up to his vehicle with a "frantic look" on her face. She was saying something, but he couldn't understand a word she was saying.



She walked passed his truck about 50 feet, when he noticed police cars with emergency lights activated.

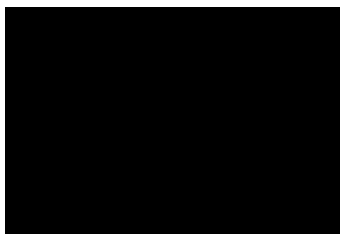
The woman turned back around, walking faster "kind of scampering". She approached the passenger side of his vehicle. His doors were locked and the passenger side window was closed. He said that the woman was practically leaning on his passenger door. Again she was saying something, but he still couldn't understand what it was she wanted. He told detectives that it was as if she was speaking in tongues. He looked down at her and saw that she had a gun in her right hand pointing at him. He said she had some clothes partially covering the barrel, but he believed it to be a real gun; which he described as being gunmetal gray.

██████████ was scared for his life and believed the woman wanted to get into his truck. His driver's side window was open so he pushed his window button "real hard" to close the window. He indicated that he pushed so hard that he thought he might push the button right through the door panel. He started his truck but at that time the police cars arrived.

The woman then ran toward ██████████ car, in which he was still seated. He did not believe ██████████ knew anything was happening. The woman walked behind a pillar next to ██████████ car. ██████████ saw that a police officer get out of his car with a rifle in hand. He said that it all happened so quickly. ██████████ backed up his truck about eight feet and then exited it to seek safety. He felt that he was in danger of being shot. As ██████████ ran to the rear of his truck he yelled out to ██████████. He was worried for ██████████ safety and wanted to get his attention and warn him of the impending danger.

██████████ told the detectives that he heard several shots. There was a short delay between shots and he believed the woman had fired the pistol. He saw the police officers coming out from the carport area and he believed the event was over. He approached Officer Williams and thanked him for saving their lives. ██████████ then exited his car and walked back and asked what had happened. He told ██████████ that he heard the shots and laid down across his seat and when he got up all his windows were shot out. ██████████ noticed that ██████████ arm was bloody from the shattered glass.

██████████ told detectives that he didn't see the woman get shot. When the shooting started he was just thinking about getting out of the area.



██████████ is the manager of Extra Space Storage and lives in an apartment on the property. On February 3, 2015 she was in the office at the time of the shooting. ██████████ provided a written statement at the scene that is incorporated into Oakland Police Department's initial report (exhibit 2, Pp83-84). In addition she was transported to the Oakland Police Department and

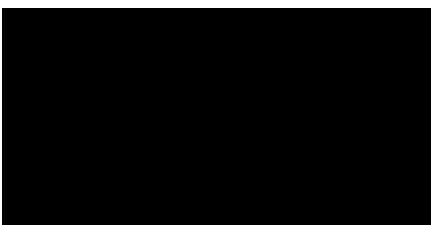


provided another statement to Oakland Police detectives at the Oakland Police Department at around 4:10 p.m. that day. Her interview was video recorded (exhibit B-5.2).

██████████ was on the phone when she heard screams. She looked up and saw an officer with a rifle and a female running into the parking lot between two parked cars. She saw that the female had a gun and immediately took her co-worker, ██████████, by the arm and told her to get down.

██████████ could see that the female had the pistol pointed towards the officer. She said when she saw the woman pointing the gun at the officer "I knew that she was going to get shot". ██████████ said she believed the woman was going to shoot the officer, because she was trapped and would not put the gun down. The only thing that was obstructing her view was a car, but it only obstructed the lower body of the woman.

She said the officer crouched down and she heard shots. The woman fell. She didn't hear anything from outside the office other than the gun shots. She said the shots were extremely loud and sounded as if they were coming from different guns.



██████████ works at Extra Space Storage in the office on the northern end of the building. On February 3, 2015 she was in the office with ██████████ when the shooting took place. She provided a written statement to Oakland Police at the scene (exhibit 2, Pp 87-88). Later that day Oakland Police detectives interviewed her at their department at about 4:35 p.m. Her interview was video recorded (exhibit B-5.3).

██████████ said she was looking out the window toward the parking area of the storage facility when she saw a female walking past on the sidewalk. At the same time she noticed a truck pulling into the property. The woman went to the passenger side of the truck. The woman turned back around and looked in the direction from which she had just come. She then ran onto the storage facility property, between ██████████ Ford Explorer and a customer who had just pulled in. She said the customer had his door open at the time.

██████████ said she saw the woman standing there when two police officers ran up. The first officer was carrying a rifle. ██████████ could hear the male officer yelling commands, but she couldn't tell what they were. The woman running onto the property and the officer shouting commands occurred almost simultaneously. The woman turned around and looked at the officer and appeared to be saying something, but ██████████ couldn't hear her. ██████████ said the next thing she knew there were three shots fired by the male officer.

██████████ said that she didn't see the woman's gun. She had her hands down in front of her, but she could only see the woman from the waste up, because the back of her vehicle and the wall blocked her view once the woman turned around.

██████████ was interviewed by Oakland Police detectives at their station at approximately 4:36 p.m. on February 3, 2015. His interview was video recorded (exhibit B-5.4). ██████████ had just left Petco in Emeryville, located north of the storage facility. He said he saw a black and white Emeryville Police SUV with its emergency lights activated; the siren was not on. He followed the police vehicle for a distance with his window down.

He saw a woman running along the left (east) side of the street beneath the freeway overpass. He described the woman as African-American, a little stalky. He couldn't estimate her age, but said she wasn't old. It became apparent that the woman was running away from the officer in the SUV.

He saw the SUV pull to the right and a female officer exited. The officer went around the back of the SUV and pulled out a gun. She got back in and drove off in the same direction as the woman he saw on the street. It appeared that the woman ran onto the storage facility property. The SUV pulled to the left side of the street and then a second police car arrived. It too was a black and white Emeryville police car and had its emergency lights activated.

The second car drove around ██████████ vehicle and stopped. A male officer exited the car and crossed the street. He saw the officer kneel down and begin shooting between the pillars on the storage property. He said he appeared to take pretty good aim. ██████████ was about 50 feet away from the male officer. He didn't hear the officer say anything and he could not see the woman.

██████████ estimated the time from the officer exiting his vehicle to the time the shooting started to be only about 10 seconds. He said he thought the male officer fired three or four times. He told the detectives that he didn't believe multiple weapons were being discharged, but if there was a pistol involved he doesn't think he would have been able to hear it over the rifle.

**Edward Mayorga**  
Emeryville Police Detective

I spoke with Detective Mayorga on April 13, 2015. Mayorga was assigned to drive Officer Shepherd back to the station following the shooting. While at the station he remained with her until officers from Oakland Police relieved him. He told me that he was careful not to engage



Shepherd in conversation about the shooting. The only dialog they had was when he asked her if she was okay; when she asked him to contact her legal defense fund representative and to call [REDACTED]

When the evidence technician from Oakland arrived, Mayorga rendered both Shepherd's and William's pistols safe and presented them to the technician as evidence. He then replaced each officer's handgun from the department's armory. Detective Mayorga said that photographs of both officers were taken by Emeryville Police Officer Steven Hintergardt. This was done to document how they were dressed and any injury that they may have sustained.

Detective Mayorga is a department range instructor. He confirmed that the pistols and rifle are department issue and the ammunition recovered from the weapons were of the type authorized by the department.

### **Lance Goodfellow**

Emeryville Police Detective

On April 9, 2015, I spoke with Lance Goodfellow who is a detective with the Emeryville Police Department. Following the shooting, he was directed to drive Officer Williams back to the police department. Goodfellow told me that he and Williams barely spoke on the ride back to the station. In fact the entire ride back to EPD, Williams had his body camera activated and it recorded everything that was said. Goodfellow did not speak with Williams about the shooting.

### **Joel Hannon**

Emeryville Police Sergeant

Sergeant Hannon was the on duty watch commander at the time of the Officer Involved Shooting and was one of the first on scene following the incident. Per department policy he completed an Unusual Incident Report (exhibit 14). In his report, he identified applicable department policy regarding the discharge of a firearm and the use of deadly force by an officer.

Ostensibly the report gave an overview of the original call for service and the ensuing shooting. He documented his request for a public safety statement from both officers, which he received and the actions taken at the scene by department staff following the incident. Of particular note the report indicated that Officer Costello stood guard over the revolver found near Henderson's body while medical teams performed and completed their duties.

Sergeant Hannon directed Detective Goodfellow to transport Williams back to the police department and Detective Mayorga to do the same for Officer Shepherd.

## INVOLVED OFFICERS' STATEMENTS

### **Michelle Shepherd**

Emeryville Police Officer

On April 6, 2015, Officer Shepherd was presented with a letter of intent to interview from Chief James. Accompanying the letter was a copy of the transcripts from her interview with Oakland Police Detectives and the Alameda County District Attorney's Office that was conducted February 3, 2015 (exhibits 15 and 16 respectfully).

On April 15, 2015 Emeryville Police Commander Jeannine Quan and I met with Officer Michelle Shepherd at 08:55 a.m. in the conference room of the Emeryville Police Department. Officer Shepherd was represented by Mr. Steven Betz, Esq. from the law offices of Rains Lucia Stern. Mr. Betz was informed of both officers' interviews, by me via email and by the department via US mail (exhibit 17).

I read Shepherd an Administrative Advisement (exhibit 18) and a Miranda Admonition (exhibit 19). Officer Shepherd refused to waive her rights, and was then read the Lybarger Admonition (exhibit 20), which compelled her to answer all of our questions. I closed the interview by reading Shepherd a closing admonition (exhibit 21). I had Officer Shepherd sign and date the Miranda, Lybarger and Closing Admonition forms. The interview in its entirety was audio recorded and transcribed (exhibits E-1 and 22 respectively).

The following synopsis of Officer Shepherd's statement is a combination of her interview with representatives from the Oakland Police Department and the Alameda County District Attorney's Office the evening of the shooting and the interview on April 15, 2015.

On the afternoon of February 3<sup>rd</sup> Officer Shepherd was parked at the Black Bear Diner (5750 Christie Avenue, Emeryville, CA) when she received a call for service regarding an uncooperative shoplifting suspect at Home Depot. Black Bear Diner is about 1.25 miles from Home Depot. Shepherd described the weather as a sunny mid-afternoon; visibility was good. Shepherd stated that she has handled many petty thefts, but has rarely had to use force in those situations.

She initially responded to the call without using her vehicle's emergency lights or siren. She said that dispatch had updated the call as she was en route, advising that the suspect (Henderson) had fallen and requested medical attention. A short time later dispatch advised that the woman had brandished a gun and was running away from the area. She said that when she received that information, in the back of her mind she knew that the crime likely became a robbery. She was concerned as she wasn't certain from where her cover was responding and the woman was now a threat to the public.

As Shepherd arrived on scene, she saw a Home Depot Loss Prevention Agent, she knows as [REDACTED] from previous contacts, pointing southbound Hollis Street. He was pointing at the only



woman on the street running south on the east sidewalk. Officers Shepherd stated that she rolled down her window and asked [REDACTED] if that was the woman, to which he responded that it was.

Henderson looked back at one point just as she approached a stopped northbound bus. Officer Shepherd saw a gun in one of the Henderson's hands as she neared the doors of the bus. Shepherd was only about 20 feet from her at that point. Henderson was gesturing frantically in an attempt to board the bus. Officer Shepherd un-holstered her pistol thinking that she would have to challenge her before Henderson got on the bus. Shepherd said she was fearful that the woman would shoot the bus driver. In all of the commotion, Shepherd had placed her pistol on the passenger seat of her car so that she could unbuckle her seatbelt and use the vehicle's radio. She applied her brakes and in doing so, her pistol slid to the passenger floorboard. At that time the bus drove away abruptly without allowing Henderson to board and Officer Shepherd was unarmed. She saw Henderson run toward the rear of the bus and approach a northbound lime green taxicab (this vehicle was not a cab, but actually a vehicle being driven by [REDACTED]). The cab was stopped directly behind the bus. Shepherd realized that it was best to keep her distance until her cover arrived and she could retrieve her pistol.

Officer Shepherd said when the woman approached the driver's side of the taxi she seemed more aggravated. She appeared to be pounding on the driver's door; with the gun still in her hand. Shepherd could see the taxi driver looking at Henderson with a scared look on his face. Shepherd was about 30 or 40 feet from the cab. She could not recall if the cab drove away or if the woman just ran off, regardless she did not gain access to the cab and ran back to the east curb in a southern direction. The woman now was another 10 feet or so further away and Shepherd felt comfortable exiting her car and retrieve her weapon from the floorboard. She stopped her car under the I-580 overpass at the west curb and ran to the passenger side, recovered her gun, re-holstered it and ran back to the driver's side. It was at about this time that Officer Williams drove up with his emergency lights and siren activated. She said it was difficult to communicate with Williams because of the siren, but she could tell by the look on his face he was asking where the woman was. Shepherd pointed southbound and used her handheld radio to put out that the woman was running toward the storage units with a gun in hand.

Williams drove ahead of her as she got back into her car and followed him. Henderson had run past Officer Williams's car and Shepherd drove further south to cut her off. As she exited her car Officer Shepherd drew her pistol again. She told us that she thought that she should put a command over the radio so that it would be recorded. She said that she might have kept her radio keyed a little longer and stated to Henderson to show her (Shepherd) her hands.

When asked if she ever identified herself as a police officer, she said she did not believe she verbally identified herself, but she was in her marked patrol car and in a full police uniform. When Henderson saw her she ran faster. Shepherd said she didn't recall Officer Williams identifying himself as a police officer either. However she does recall Williams giving Henderson commands. She doesn't recall specifically what was being said, but she could hear him yelling from her left side. Shepherd said she too gave commands to Henderson to drop her weapon multiple times. She was yelling the commands as loud as she could.



As Officer Shepherd was shouting commands to the woman, Henderson ran into the carport area of the storage facility. Henderson still appeared to be flustered and ran to the back wall and to the north still with gun in hand. I presented Officer Shepherd with two Bing Maps images of 3406 Hollis Street (Extra Space Storage) and had her mark them with her location and the direction of flight by Henderson. Using a black ink pen, Shepherd marked the overhead view with an X to demonstrate where she had stopped her car when she exited to approach Henderson (exhibit 23). Shepherd stated she stopped her vehicle southbound in the south lanes of traffic parallel to the curb. She also marked Officer Williams's position with an O to indicate his vehicle position. She signed and dated the image. I have highlighted the marks with a yellow highlighter to better locate the markings. The second document was a street view of the storage facility (exhibit 24). Without marking the document, Shepherd pointed out the route Henderson took as she entered the southernmost portion of the property. She indicated that Henderson kept near the back wall and may have stopped momentarily to try a door. She did not make entry to the building and continued to run north about half way up the property. At that point she scribbled a circle where Henderson had stopped running and confronted Officer Williams. Officer Shepherd signed and dated that document as well. Again Shepherd used a black ink pen to mark the image and it is very difficult to make out. I highlighted it using a red marker. It was in this location she said that a small silver sedan was parked facing toward the building (east).

Officer Shepherd approached the woman at an angle and tried to use the second pillar to the south of the silver sedan as her cover. The woman kept flailing her arms about. Shepherd said the woman was initially standing by the driver's side wheel-well of the silver sedan. She could see Henderson's upper chest over the car and the rest of her torso through the windshield. The woman was focused to the north, and believes it was Officer Williams upon whom the woman was fixated. Henderson had her hand, which was holding the gun, at 90 degrees from her chest, pointing toward Williams. Shepherd said she wasn't certain that Henderson even knew that she was standing there. Shepherd heard a gunshot and believed that it was Henderson firing on Officer Williams. That prompted her to discharge her pistol once in response in an attempt to "stop the threat". She remembers that she was trying to get a shot at her shoulder or upper torso. She said it was more likely a point and shoot action than actually taking aim. As soon as Shepherd shot, Henderson moved closer toward the driver side of the car with the gun in hand and was still a threat. At the same time, she saw a dark shadow sitting in the front passenger side of the silver vehicle. She said he then went down into his passenger seat. At that point she wasn't going to take any more shots and needed to get a better angle. The backdrop at the time was the carport wall.

After firing her pistol Shepherd heard another shot or two; she could then see Williams near the trunk at the driver's side of the silver car. Shepherd walked around the rear of the car and then saw that the woman was down on the ground. The revolver was on the ground near Henderson's right hand about four feet from her body. She didn't see anyone touch the revolver once the shooting was over. It was clear that Henderson was dead, Shepherd said there was a lot of blood and body tissue exposed. Officer Williams checked the woman for a pulse and she radioed for medical assistance. She then asked the person in the silver vehicle if he was okay. He had sustained cuts apparently from shattered vehicle glass.



Officer Shepherd was not wearing a body camera or have any other recording device activated during the incident.

During the entire incident Officer Shepherd said that she was very scared; she can't recall the last time she was that scared. Shepherd said she was scared because they had a subject with a gun who just ran about two blocks without dropping the weapon. It just didn't make sense why someone would keep the gun in her hand after a petty theft. With all the commands given and the opportunities to drop the gun she still didn't do it. Shepherd wondered what the woman would do to get away. Officer Shepherd also had concerns for the safety of the general public. She felt the woman was obviously doing whatever she could to get away. Officer Shepherd said she had concern for her own safety, but at the time of the shooting she felt pretty good about her cover and was even more concerned for Officer Williams.

When asked why she opted to deploy her sidearm instead of a patrol rifle she said that her initial torment of losing her handgun had kept her focused on keeping control of her pistol and she didn't think to deploy the rifle or shotgun. I asked if she had thought about other less lethal options before deciding to deploy her pistol. She replied that she is a Taser instructor and it was not an option.

Commander Quan asked Shepherd if she had ever received simunitions training, to which she responded, "yes"; early 2014. Quan asked what the training focused on and Shepherd responded "force options" to go into an incident to determine what force was necessary to stop a threat.

### **Warren Williams**

Emeryville Police Officer

On April 6, 2015, Officer Williams was presented with a letter of intent to interview from the Chief James. Accompanying the letter was a copy of the transcripts from his interview with Oakland Police Detectives and the Alameda County District Attorney's Office that was conducted February 3, 2015 (exhibits 25 and 26 respectfully).

On April 15, 2015 Emeryville Police Commander Jeannine Quan and I met with Officer Warren Williams at 10:06 a.m. in the conference room of the Emeryville Police Department. Officer Williams was represented by Mr. Steven Betz, Esq. from the law offices of Rains Lucia Stern.

I read Williams an Administrative Advisement (exhibit 27) and a Miranda Admonition (exhibit 28). Officer Williams refused to waive his rights and was then read the Lybarger Admonition (exhibit 29), which compelled him to answer all of our questions. I closed the interview by reading Williams a closing admonition (exhibit 30). I had Officer Williams sign and date the different admonition forms. The interview in its entirety was audio recorded and transcribed (exhibits E-2 and 31 respectively).

The following synopsis of Officer Williams's statement is a combination of his interview with representatives from the Oakland Police Department, the Alameda County District Attorney's Office the evening of the shooting and the interview from April 15, 2015.



On the afternoon of February 3<sup>rd</sup> Officer Williams was at the Emeryville Police Department on Powell Street which is approximately 2.5 miles away from Home Depot. At about 12:35 p.m. he heard Officer Shepherd being dispatched to Home Depot for an uncooperative shoplifter. Officer Williams described the weather that day as clear and sunny. He said the tone of the call appeared to be a routine petty theft report from loss prevention. He said that the department responds to those types of calls regularly. He estimated that only one in twenty or thirty result in the use of force; which usually means that officers would have to hold down and handcuff the suspect.

While en route dispatch advised that loss prevention advised the suspect was armed with a revolver. Williams believed that it was no longer a misdemeanor theft, but it an armed robbery in progress. He said that the Home Depot shopping area is a very busy public place and he believed the display of a firearm posed a significant risk to the public. At that time he activated both his emergency lights and siren. He said that he decided to deploy his rifle once he learned the suspect was armed with a revolver. He said that he wanted the tactical advantage provided by the deployment of the rifle. He wanted distance and accuracy which the patrol rifle afforded him over his pistol.

After activating his emergency lights and siren he said it took about one minute to arrive in the area of Home Depot. As he arrived he heard Officer Shepherd putting out a description and direction of flight of the suspect. Shepherd described the woman as a black female with a gray top. He said that by the information being supplied by Shepherd he believed she had "eyes on" the suspect and was very close, which made it even more urgent for him to arrive quickly. He met up with Shepherd near the 3500 block of Hollis Street; she was out of the car. Officer Shepherd's vehicle had its emergency lights activated. He couldn't hear Shepherd very well and had to turn his siren off. She pointed toward a woman that was the only black female in a gray top heading southbound on Hollis near the storage facility. He remembers seeing the woman walking "like an Olympic speed walker", southbound on the eastern sidewalk. It was as if she was not trying to draw attention to herself, but she was trying to get out of the area.

Williams said Shepherd was the first on scene and that her emergency lights were activated. When he arrived at the storage facility, he stopped his car in the middle of the street and began to unlock his patrol rifle. Asked if he recalls identifying himself as a police officer, he said that he did not. He did tell us that he was in a fully marked police vehicle and Emeryville Police uniform at the time and felt it was pretty obvious by lights, siren and uniform that he was a police officer. Once exiting his vehicle, he began screaming "Get on the ground! Get on the ground!" Henderson ignored his commands and kept walking into the carport area of the storage facility. It wasn't until then that he saw the revolver in her right hand. She was holding it up and he believed it to be a real firearm. She turned and started lowering the gun in his direction.

I provided him with two Bing Maps documents; one was an overhead view of the storage facility (exhibit 32) and the other was a street view (exhibit 33). He drew a small rectangular shape on the overhead view map in the northbound lanes of Hollis just in front of Extra Space Storage. I used a highlighter to help in identifying the mark as he was using a black ink pen. He said he



pulled up at more of a 45 degree angle to the east curb of Hollis; a southeast direction. He then drew a circle with an X in it to depict the area where he initially saw the suspect in front of the facility. Again I used a highlighter to identify this location. On the street view map he drew a rectangle with a line to the side which represented his vehicle's location with the driver's side door open. He drew an oval near the rectangle that represented the area of his movement once he exited his vehicle. Finally, he drew another oval which represented the area of movement of the Henderson once he arrived on scene. Officer Williams said that the woman walked east into the carport area then northbound around a small gray car that was parked on the property. He told us that once he exited his vehicle, he doesn't remember seeing Officer Shepherd until after the incident was over. He doesn't recall hearing her give any commands.

When the woman turned toward Williams he was concerned that the woman was going to shoot him. That is when he fired the first two or three rounds. The woman was running across his line of sight. Officer Williams said of Henderson, that she was a big girl, but he missed her. Then he heard another gun shot that sounded as if it came from the right of him. He didn't know if it was Shepherd firing.

The woman then moved to the front of the gray car's driver's side fender. At that point he and Henderson were facing one another. It was a much more familiar scenario for him. He said that they rarely get lateral movement range training. He didn't have cover and began to drop to one knee. He said, "He just popped out of the car in the way of everything," in referring to the occupant of the gray car [REDACTED]. Williams said that he "literally froze me", because [REDACTED] was in the line of fire. He didn't have a shot, but he could see the woman's hand with the gun coming down over [REDACTED] silhouette. When [REDACTED] dove back into the car, out of the way, Williams then had an open shot at the woman. He fired another two or three rounds and the woman fell to the ground. She dropped her gun, which fell within a few feet of her. Then the woman began to move; it appeared as if she was moving in the direction of the revolver. Williams was afraid that she was trying to retrieve the gun to shot him so he fired one or two more rounds at the woman. He said he could not think of any other options, she was very close to the gun and he was afraid that she would shoot him if she picked it up. After firing the last one or two shots, the woman fell back to the ground and stopped moving.

Officer Williams said he moved in and checked for a pulse but could not feel one. He said he would have tried to render aid if he had found a pulse. He then broadcasted over the radio that she was down and requested Code 3 medical and that she was shot in the head and arm. He said that he didn't recall every hearing the woman saying anything.

Once he had radioed for medical assistance, Williams noticed the man from the gray car get into a gray pickup truck. It was at about that time that Williams activated his body camera.

I asked Officer Williams what was going through his mind from the time he exited his vehicle. He said that he was in fear for the safety of the people in the line of vehicles on Hollis Street behind him. I asked if he was fearful for his own safety and at that point he broke down. After a few seconds he said, "Very much". Officer Williams said, she didn't follow any of his commands and didn't make any attempt to surrender. Williams said he was very afraid of dying.



Once he saw the gun, he said it was like playing football in high school. He continued to say in essence, once you get the ball you don't hear anyone in the stands; all you hear is your breathe and footsteps. When the woman was down the next thing he remembered was hearing Shepherd on the radio saying, "Shots fired! Shots fired!"

Officer Williams said that he recalls last training with the rifle assigned to him in February 2014. He didn't believe there were any other force options available to him at the time of this incident.

I asked Williams about the body camera that he was wearing. He said he had been using it regularly for about a year. He wore it on his belt. It was not mandated to wear the camera or activate it. It was "kind of a pilot program." He had not received any training on the use of the camera, he had just worked with it until he figured out how it functioned. Williams said that he had activated the camera 50 to 100 times since he first took it into the field. He said if someone is very argumentative or if he felt that someone would lie about him, he would turn the camera on.

During this incident he didn't activate the camera until after it had come to an end. He told us that he activated at that time because he wanted to record the scene before everyone had arrived and it was disturbed by their presence. He said the device has a green light that illuminates when activated, but he has placed a piece of tape over it so that it isn't seen by those he is recording. Once he turned it on he forgot it was activated.

I asked why he didn't turn the camera on once he realized he was responding to a robbery. He said it was more important to arm himself with his rifle, than to take the time to turn on the camera and record his death.

Commander Quan asked if he had received any simunition training. He said that he recalled having training at the high school before it was torn down, again at an abandoned warehouse and following his time at the academy at Alameda County Sheriff's range. He also recalls having active shooter training in Contra Costa County with simunitions.

Quan also asked Williams to clarify a statement he made earlier that it was fortunate that the suspect chose to turn into the storage facility instead of continuing south on Hollis Street. He said his fear was that they were going to have an active shooter situation on a crowded street. He felt that there would have been many more people at risk.

## **EXPERIENCE, TRAINING and OTHER APPLICABLE INFORMATION**

**Officer M. Shepherd** has been a police officer with the Emeryville Police Department since September 7, 2007. She has no other law enforcement experience.

On February 3, 2015 Shepherd was assigned to uniformed patrol. Her scheduled work period for that day was 2:00p.m. to midnight. However, she was called into work overtime at 10:00 a.m. Shepherd was assigned and driving marked Emeryville Police vehicle #1254, a Ford Explorer

SUV. Officer Shepherd was carrying a department issued Smith and Wesson M&P 40, .40 caliber pistol, serial number [REDACTED]

A review of Officer Shepherd's training records (exhibit 34) show that she has received applicable training throughout her career in the use of department issued handguns, shotguns, and rifles. This training has come at department approved training facilities and include the use of live ammunition and simunitions (non-lethal training rounds). Additionally, she has received department sanctioned training on active shooter incidents and force options.

**Officer Williams** has been a police officer with the Emeryville Police Department since July 27, 2007. He has no other law enforcement experience.

On February 3, 2015 Williams was assigned to uniformed patrol. His scheduled work period for that day was 6:00 a.m.-4:00 p.m. However, he was called in to work overtime at 2:00 a.m.

On the day of the event, Williams was assigned and driving marked Emeryville Police vehicle # 0926, a Ford Crown Victoria sedan. Officer Williams was carrying a department issued Smith and Wesson M&P 40, .40 caliber pistol, serial number [REDACTED]. Additionally, Officer Williams was assigned a Colt AR-15 patrol rifle, serial number [REDACTED]

A review of Officer Williams's training records (exhibit 35) show that he has received applicable training throughout her career in the use of department issued handguns, shotguns, and rifles. This training has come at department approved training facilities and include live ammunition and simunitions (non-lethal training rounds). Additionally, he has received department sanctioned training on active shooter incidents and force options.



# **APPLICABLE DEPARTMENT POLICIES AND RULES**

## **Emeryville Police Department Policy Manual**

### **Policy 300 Use of Force**

#### **Section 300.2 Policy**

It is the policy of this department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

Give that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

#### **Section 300.2.1 Use of Force to Effect an Arrest**

Any peace officer that has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance (Penal Code § 835a).

#### **Section 300.2.2 Factors Used to Determine the Reasonableness of Force**

When determining whether or not to apply any level of force and evaluation whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (d) Proximity of weapons.
- (e) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).

- (f) Seriousness of the suspected offense or reason for contact with the individual.
- (g) Training and experience of the officer.
- (h) Potential for injury to citizens, officers and suspects.
- (i) Risk of escape.

### **Section 300.3 Deadly Force Applications**

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or very serious injury. Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or very serious injury.

### **Section 300.4.1 Notification to Supervisors**

Supervisory notification shall be made as soon as practical following the application of any force described in this order.

## **Policy 304 Shooting Policy**

### **Section 304.1.1 Policy**

It is the policy of this department to resort to the use of a firearm, when it reasonably appears to be necessary, and generally:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.

### **304.1.3 Report of Weapon Discharge**

Except during training or recreational use, any member who discharges a weapon accidentally or intentionally, on or off-duty, shall make a verbal report to the on-duty Watch Commander as soon as circumstances permit. If on –duty at the time of the incident the member shall file a written report with his/her Division Commander prior to the end of shift and if off-duty, as directed by the supervisor but no later than the end of the next regularly scheduled shift.

## **Policy 312 Firearms**

### **312.2.1 Duty Weapons\***

The authorized departmental issued handgun is the Sig-Sauer SP2340 .40 SW  
(\* The department has transitioned it issued handgun to the Smith & Wesson M&P .40)

### **312.2.3 Ammunition**



Officers shall carry only department-authorized ammunition.

#### **312.2.4 Alcohol and Drugs**

Weapons shall not be carried by any officer who has consumed an amount of an alcoholic beverage or taken any drug that would tend to adversely affect the officer's senses or judgment.

### **Policy 316     Officer Response to Calls**

#### **316.4 Initiating Code 3 Response**

If an officer believes a Code-3 response to any call is appropriate, the officer shall immediately notify the Communications Center.

### **Policy 432     Patrol Rifles**

#### **432.3 Specifications**

Only weapons and ammunition that meet agency authorized specifications, approved by the Chief of Police, and issued by the Department may be used by officers in their law enforcement responsibilities. The authorized patrol rifle issued by the Department is the Colt AR-15.

#### **432.5 Training**

Officers shall not carry or utilize the patrol rifle unless they have successfully completed departmental training. This training shall consist of an initial 24-hour patrol rifle user's course and qualification score with a certified patrol rifle instructor. Officers shall thereafter be required to successfully complete quarterly training and qualification conducted by a certified patrol rifle instructor.

An officer who fails to qualify will no longer be authorized to carry the patrol rifle until successfully qualifying.

#### **432.6 Deployment of the Patrol Rifle**

Officers may deploy the patrol rifle in any circumstance where the officer can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

- (b) When an Officer is faced with a situation that may require the delivery of accurate and effective fire at long range
- (c) Situations where an officer reasonably expects to need to meet or exceed a suspect's firepower

#### **432.7 Discharge of the Patrol Rifle**

The discharge of the patrol rifle shall be governed by the Department's Deadly Force Policy, Policy Manual § 300.

### **Emeryville Police Department Manual of Rules**

#### **Rule 7.07 Firearms –Display and Discharge**

- a. firearms and ammunition carried by a member, whether on duty or off duty, when acting as a peace officer, shall adhere to Department specifications
- b. Members are required to report any deliberate or accidental discharge of firearms on duty
- c. Members shall exhaust every other means of apprehension before resorting to the use of a firearm, and then only if there exists reasonable cause to believe a violent and atrocious felony is/has occurred. The use of deadly force shall, when operating as a peace officer, be in accordance with Department directives and existing law.

#### **Rule 11.05 Use of Physical Force**

The use of physical force shall be restricted to circumstances permitted by Department directives, specified by law, and to the degree necessary for the accomplishment of a police task. Malicious assaults or batteries committed by members or employees constitute gross misconduct.

#### **CONCLUSION**

Although the completed criminal investigations from the Oakland Police Department and the District Attorney's Office are not available, it is apparent through this Administrative Investigation that both officers acted within the course and scope of employment as police officers for the City of Emeryville and were in compliance with all applicable Department policies and rules.

Respectfully submitted,



Michael Fraser